

**Not for Publication**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

BARAKAA WELTON,

*Defendant.*

Crim. No. 18-487

**OPINION & ORDER**

**John Michael Vazquez, U.S.D.J.**

On November 17, 2020, the Court issued an Opinion and Order which denied Defendant's motion to modify his sentence and for immediate release. D.E. 41 ("Prior Opinion" or "Prior Op."), 42. Defendant now moves for reconsideration. D.E. 44. The Government filed opposition, D.E. 48, to which Defendant replied, D.E. 49. The Court reviewed the parties' submissions and considered the motion without oral argument pursuant to Local Criminal Rule 1.1 and Local Civil Rule 78.1(b). For the following reasons, the Court reconsiders its Prior Opinion but denies Defendant's motion to modify his sentence and for immediate release.

In the Prior Opinion, the Court detailed the relevant background and applicable legal standard, which the Court incorporates by reference here. D.E. 41. Defendant now indicates that the institution in which he is housed, FCI Schuylkill in Pennsylvania, has experienced an outbreak of COVID-19 cases. Defendant also indicates that he learned on December 8, 2020 that he had contracted COVID-19. Fortunately, he did not require hospitalization, and he has now recovered.

In its Prior Opinion, the Court found that Defendant had not shown extraordinary and compelling reasons under 18 U.S.C. § 3582(c)(1)(A) because, in part, FCI Schuylkill had not

suffered any serious outbreak of positive cases. Prior Op. at 9-10. The outbreak, along with Defendant's positive test, present new information that clearly was not available to Defendant when he made his initial motion; these new facts are a sufficient basis for the Court to reconsider its Prior Opinion.

Nevertheless, the Court denies Defendant's motion for release for several reasons. First, Plaintiff had COVID-19 and, fortunately, has recovered. Reinfection is rare. Centers for Disease Control and Prevention, *Reinfection with COVID-19* (Oct. 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>. Second, Defendant was offered the vaccine but declined. Such a decision demonstrates that he has voluntarily foregone an opportunity for self-care offered by the BOP. *See, e.g., United States v. Baeza-Vargas*, No. Cr-10-00448, 2021 WL 1250349, at \*2-3 (D. Ariz. Apr. 5, 2021) (listing more than a dozen decisions reaching the same result); *see also United States v. Jackson*, No. 07-40-2, 2021 WL 1145903, at \*2 (E.D. Pa. Mar. 25, 2021); *United States v. Jackson*, No. 15-cr-260(7), 2021 WL 806366, at \*1-2 (D. Minn. Mar. 3, 2021).

. In addition, while FCI Schuylkill did experience a spike in cases for a period, the facility has again stabilized. As of May 28, 2021, FCI Schuylkill has one positive case while 541 inmates and 73 staff have recovered. *COVID-19 Cases*, Bureau of Prisons, <https://www.bop.gov/coronavirus/index.jsp>. (last accessed May 28, 2021). The BOP has also begun its COVID-19 vaccine implementation plan and has administered 184,201 doses as of May 28, 2021. *Id.*

For the foregoing reasons, and for good cause shown,

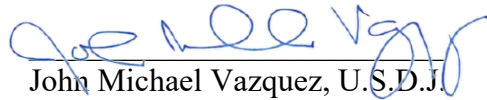
It is on this 28th day of May, 2021 hereby

**ORDERED** that Defendant's motion for reconsideration D.E. 43, is **Granted in part and Denied in part**; and it is further

**ORDERED** that the Court reconsiders its Prior Opinion due to changed circumstances; and it is further

**ORDERED** that Defendant's underlying motion to modify his sentence and for immediate compassionate release is **Denied**, and it is further

**ORDERED** that the Clerk's Office shall mail a copy of this Opinion and Order to Defendant by regular mail.

  
John Michael Vazquez, U.S.D.J.